



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2658 OF 2015 CONSOLIDATED WITH SUCCESSION CAUSE NO. 2698 OF 2015

IN THE MATTER OF THE ESTATE OF PHILIP GICHURI WAIGANJO (DECEASED)

MARGARET WAMBUI CHUCHU.....1ST APPLICANT

DAMARIS WANJIKU WAIGANJO.....2ND APPLICANT

LUCY WAITHERA KIMANGA.....3RD APPLICANT

-VERSUS-

JOHN WAIGANJO GACHURI.....RESPONDENT

RULING

1. The Application coming for consideration is dated 25.6.2019 as amended on 5.7.2019 seeking the following orders;

(i) **THAT due to the urgency of this Summons, the same be certified urgent, service of the same be dispensed with and the Summons be heard ex-parte in the first instance.**

(ii) **THAT upon hearing exparte, the Respondent herein be ordered to appear before this Court and show cause why he should not be committed to Prison for contempt of this Court's Orders made on 9th February, 2018.**

(iii) **THAT upon hearing interpartes, the Respondent herein be ordered to deposit the sum of Kshs.47, 000,000/- and/or the full value of the sale and transfer of the parcel of land to wit LR NO. 188/111/MN in an interest earning account jointly held by the Advocates on record, pending the hearing and determination of the Applicant's Petition for Revocation of the grant issued on 24th February 2016 and the deceased's Wills dated 11th July 2013 and 6th May, 2002 which is to be heard on 15th September, 2019.**

(iv) **THAT and/or in the alternative and without prejudice to the foregoing upon hearing inter parties the purported sale and subsequent transfer of Parcel of land to wit LR No. 188/111/MN to M/S Primix Enterprises Limited be revoked and the entry No. 22 to that effect in the title be cancelled and title be deposited in Court for safe custody.**

(v) **THAT upon hearing interpartes, Respondent herein be ordered to furnish the Applicants and this Honourable Court a full, detailed and accurate account of the deceased's Estate including all income and expenditure beginning 24th February, 2016 when he obtained a Grant of Letters and Administration to the said Estate to date, within 14 days of filing this Summons.**

(vi) **THAT upon hearing interpartes, the Respondent herein be committed to prison for six months for blatant disregard and disobedience of this Court's Orders of 9th February, 2016.**

2. The Amended Summons is supported by the Affidavit of the 1ST Applicant MARGARET WAMBUI CHUCHU dated 5.7.2019 in which she has deposed as follows:

(i) **THAT she is the widow of the deceased herein PHILIP GICHURI WAIGANJO (Deceased).**

(ii) THAT the Respondent JOHN WAIGANJO GACHURI is her stepson and executor of the deceased Will.

(iii) THAT the Respondent was restrained from dealing with the properties of the deceased on 29.4.2019 by consent of the parties pending hearing and determination of the Applicant's Petition for revocation

(iv) THAT the Applicant has learnt that Property LR NO. 188/111/MN (hereafter referred to as the suit property has been transferred to PRIMIX ENTERPRISES LTD vide transfer dated 15.5.2018 which properly belongs to the estate of the deceased in blatant disobedience of this Court's Order.

(v) THAT the said transfer contained a signature purported to be hers which is a forgery.

(vi) THAT Respondent has continued to dispose of property belonging to the Estate of the Deceased before the Petition for revocation has been determined.

3. The Respondent filed a Replying Affidavit dated 8.10.2019 in which he deposed as follows;

(i) THAT he is the executor of the deceased Will and was issued with grant of Probate on 26.2.2016.

(ii) THAT the Deceased was a Share Holder and Director of the following companies;

(a) Wines & Spirits (Kenya) LTD

(b) Philips Agencies Ltd

(c) Nyam Hotels Ltd

(d) Farran Estates Ltd.

(iii) THAT the said companies were family ventures and upon the demise of their mother the late TABITHA MUGURE GICHURI in 2000, his late brother DAVID NDOTONO in 2008 and the Deceased herein who was their father who died in 2015, the Respondent remained the only surviving share holder of the family companies.

(iv) THAT the Respondent was appointed managing director of the said family companies in 2009 and he is also administrator of his mother's estate in SC No. 1368 of 2015 – his sister late LEAH WACHU GICHURI'S Estate in SC No. 951 of 2016.

(v) The Respondent also deposed that 3rd Applicant LUCY WAITHERA KIMANGA in the Widow of his late brother PETER KIMANGA GICHURI and the 2ND Applicant is the widow of his late brother DAVID NDOTONO WAIGANJO and were paid their share of the proceeds of sale.

(vi) THAT the suit property has never belonged to the Estate of the deceased of further that Wines and Spirits (Kenya) Ltd is separate legal entity from the estate

(vii) THAT estate of his late father needs to be separated from the estate their late mother and further that the parties have entered into negotiations on this issue.

4. The parties filed written submissions which I have duly considered. I find that it is not disputed that on 29/4/2019 the Court ordered that the Estate of the deceased herein be preserved pending determination of the summons of revocation filed by the Applicants.

5. The 1st Applicant is seeking to have the Respondent committed to Civil Jail for 6 months for contempt of Court. She submitted that there are four elements for contempt required as established in the case of

“Trusted Society of Human Right Alliance Vs Cabinet Secretary for Devolution and Planning & 3 others [2017] eKLR”

(i) THAT the terms of the Order were clear and unambiguous.

(ii) THAT the defendant had proper notice of the terms of the Order.

(iii) THAT the defendant acted in breach of the terms of the Order.

(iv) THAT the defendant's conduct was deliberate.

6. The Respondent in his submissions stated that the suit property does not belong to the estate of his late father but it belongs to Wines and Spirits (Kenya) Ltd which is a separate Legal entity.

7. I have considered the Affidavits filed in the amended application dated 5.7.2019 together with the Submission filed by the parties.
8. The ownership documents in respect of the suit property are clearly indicated that the suit property belongs to Wines and Spirits (Kenya) Ltd and not to the deceased herein.
9. I find that it is trite law that a limited Company is a separate legal entity from its shareholders as held in the case of **Salmon v Salmon (1897) A.C. 22** where it was held that it was a principle of company law that a distinction must be drawn between the company and its directors and shareholders, as the company is a separate legal entity, and as such it could sue and be sued.
10. The company does not therefore require any support in the safeguard of its interests from the directors or shareholders. See for example in **M.S.K v S.N.K [2010] Eklr.**
11. This Court can only distribute the shares of the deceased in the said company and any issues relating to the ownership of the Property and day to day running of the company can only be handled under the companies' Act and any dispute filed in the commercial division.
12. I find that there is no evidence that the suit property belongs to the Estate of the Deceased and I therefore find it cannot be argued that the Respondent acted in contempt of the Court.
13. The 1st Applicant is not alleging that she is a shareholder in Wines and Spirits (Kenya) Limited and even if she was a shareholder, she can only seek redress in the Commercial Division which handles the said issues.
14. I accordingly dismiss the Application amended on 5.7.2017 and direct that the Application dated 15.2.2018 be heard within 30 days of this date.
15. The costs of the amended Application dated 5.7.2019 to abide in the Cause.
16. Hearing of the Application dated 15.7.2018 to proceed on a date to be taken in the Registry.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 31ST

DAY OF JANUARY, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.